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IN THE

Supreme Court of the United States

October Term, 1959

No. ~~109~~ 7

BRUCE BOYNTON,

Petitioner,

—v.—

COMMONWEALTH OF VIRGINIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of the Commonwealth of Virginia.

Opinions Below

No opinion was rendered in this case by the Supreme Court of Appeals of Virginia when it denied the petitioner a writ of error to the judgment of the Hustings Court of the City of Richmond on the 19th day of June, 1959. No opinion was rendered by the Hustings Court of the City of Richmond on the 20th day of February, 1959 when it found petitioner guilty of a violation of §18-225 of the Code of Virginia, 1950, as amended.

Judgment

The judgment of the Supreme Court of Appeals of Virginia was rendered on the 19th day of June, 1959 and a stay of execution and enforcement of the judgment of said

Court was granted on the 24th day of July, 1959 staying the execution and enforcement of same until the 17th day of September, 1959, unless the case has before that time been docketed in this Court in which event enforcement of said judgment shall be stayed until the final determination of this case by this Court.

Questions Presented

1.

Whether the criminal conviction of plaintiff, an interstate traveller, for refusing to leave an interstate bus terminal restaurant where he sought refreshment at a regularly scheduled stop in the course of his interstate journey and was barred solely because of his race, is invalid as a burden on interstate commerce in violation of Article I, §8, Clause 3 of the United States Constitution.

2.

Whether said conviction violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States.

Constitution and Statutory Provisions Involved

This case involves:

Article I, §8, and the due process and equal protection clauses of the XIV Amendment of the Constitution of the United States.

§18-225 of the Code of Virginia of 1950. This statutory provision is set forth in the statement, *infra*, p. 4.

Statement of the Case

Bruce Boynton, petitioner, a Negro student at the Howard University School of Law, Washington, D. C., purchased a ticket, in Washington, D. C., for transportation by Trailways Bus to Montgomery, Alabama, via Richmond, Virginia, and then with connecting carrier to his home in Selma, Alabama. He boarded a Trailways Bus in Washington, D. C., at 8:00 p. m., and arrived at the Trailways Bus Terminal in Richmond, Virginia about 10:40 p. m. The bus driver notified him and all other passengers that there would be a forty minute layover at the Richmond Trailways Terminal (R. 31-33).

Petitioner left the bus, entered the waiting room of the terminal and noticed a small restaurant crowded with colored patrons. He proceeded through the waiting room and approached another restaurant, which was practically empty, adjacent to the waiting room (R. 33). He entered that restaurant, where the white waitress informed him that he could not be served. She advised him to go to the colored restaurant. He explained that the colored restaurant was crowded, that he was an interstate passenger, and that he desired to be served before boarding his bus which was due to leave shortly (R. 34-35). She persisted in stating that it was not the custom to serve Negroes in that particular restaurant. He then inquired who could serve him. The waitress called the assistant manager who demanded that petitioner leave, and stated that he could not be served in that restaurant because he was colored (R. 35).

When petitioner refused to leave the restaurant the assistant manager caused him to be arrested (R. 35) and charged with a violation of §18-225 of the Code of Virginia of 1950, as amended which provides:

"If any person shall without authority of law go upon or remain upon the lands or premises of another after having been forbidden to do so by the owners, lessee, custodian or other person lawfully in charge of such land, or after having been forbidden to do so by sign, or signs posted on the premises at a place or places where they may be reasonably seen, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $100.00 or by confinement in jail not exceeding thirty days, or by both such fine and imprisonment."

The bus terminal was owned and operated by Trailways Bus Terminal, Inc. (R. 9-17). The restaurants therein were built into the terminal upon its construction and leased by Trailways to Bus Terminal Restaurant of Richmond, Inc. (R. 9-17). The lease gave exclusive authority to the lessee to operate restaurants in the terminal, required that they be conducted in a sanitary manner, that sufficient food and personnel be provided to take care of the patrons, that prices be just and reasonable, that equipment be installed and maintained to meet the approval of Trailways, that lessee's employees be neat and clean and furnish service in keeping with service furnished in an up-to-date, modern bus terminal; prohibited the sale of alcoholic beverages on the premises; and permitted cancellation of the lease upon the violation of any of its conditions (R. 9-17).

Petitioner was convicted in the police court of the City of Richmond and fined $10.00, which conviction was appealed to the Hustings Court of the City of Richmond which affirmed (R. 38). Petition for writ of error to the Supreme Court of Appeals was rejected, the effect of which was to affirm the judgment of the Hustings Court (R. 42). The affirmance by the Supreme Court of Appeals of Virginia, appears in the Appendix, *infra*, p. 11. In the Hustings Court

of the City of Richmond petitioner objected to the criminal prosecution on the grounds that it contravened his rights under the Commerce Clause of the United States Constitution (Article 1, Section 8) and the Interstate Commerce Act (Title 49 U. S. C., Section 316(d)) and that he was thereby denied due process and equal protection of the laws (R. 5). Said objections were renewed by notice of appeal and assignment of error to the Supreme Court of Appeals of Virginia (R. 3). These defenses, however, as aforesaid, were rejected at all stages of the litigation without opinion.

Reasons Relied on for Allowance of the Writ

I. The decisions below conflict with principles established by decisions of this Court by denying petitioner, a Negro, a meal in the course of a regularly scheduled stop at the restaurant terminal of an interstate motor carrier and convicting him of trespass for seeking nonsegregated dining facilities within the terminal.

In *Morgan* v. *Virginia*, 328 U. S. 373 this Court held that Virginia could not require racial segregation on interstate buses. The basis of the decision is that the enforcement of such seating arrangements so disturbed Negro passengers in interstate motor travel that a burden on interstate commerce was created in violation of Article 1, Section 8 of the United States Constitution. *Id.* at 382. This Court held that absent congressional legislation on the subject the Constitution required "a single uniform rule to promote and protect national travel." *Id.* at 386. An identical rule has been applied to similar racial restrictions on commerce imposed by rules of the carrier enforced by arrest and criminal conviction. *Whiteside* v. *Southern Bus Lines*, 177 F. 2d 949 (6th Cir. 1949); *Chance* v. *Lambeth*, 186 F. 2d 879 (4th Cir. 1951), cert. denied 341 U. S. 941. It

is obvious that interstate bus travel cannot be conducted without regularly scheduled rest stops and anyone who has travelled for long distances on an interstate bus knows that dining facilities at such stops are an essential part of interstate bus service. In fact, in this case the record reveals that the Richmond Terminal, at which petitioner's arrest occurred, was designed to incorporate a restaurant at the time of its construction (R. 9). To deny petitioner a meal at the terminal obviously was as disturbing to him or indeed far more disturbing than the shifting about of passengers on a bus which this Court condemned in *Morgan, supra.*

Petitioner here testified that the colored restaurant appeared to be crowded at the time he approached it during the layover, while the white restaurant was not crowded (R. 33). Although the assistant manager of the bus terminal restaurant testified that there was "seating capacity" in the colored restaurant at or around the time petitioner entered the white restaurant (R. 24) this apparent conflict may be explained by the fact that passengers-customers come and go: if petitioner had waited in the colored restaurant he might have eventually been served. But it surely is a burdensome discrimination in service to subject one class of passengers to the uncertainty of waiting at a colored restaurant for the chance of a seat while seats surely are available at the white restaurant.

But petitioner's objection to the police enforced segregation is more fundamental. In *Henderson* v. *United States,* 339 U. S. 816, 825, this Court, while dealing with the Interstate Commerce Act, condemned racial segregation in railroad dining cars as "emphasiz[ing] the artificiality of the difference in treatment which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility." An interstate traveler finds such treatment as objectionable

in a terminal as he does on a moving diner. Moreover, clearly even more disruptive of a smooth interstate journey was petitioner's arrest and conviction which enforced the racial restriction see *Morgan* v. *Virginia, supra.* These decisively interrupted the trip. That the restaurant in question was leased by the terminal to a restaurant operator hardly made the interruption of petitioner's journey less conclusive.

As the terminal's lease to the restaurant operator indicates (R. 9), the lease was made prior even to the construction of the terminal. The restaurant was built as an integral and essential part of the interstate facility. The lessor imposed conditions on the lessee designed to assure adequate sanitary conditions, reasonably priced service for restaurant patrons, and the right to cancel the lease upon violation of any of its conditions. Access to the restaurant obviously facilitated interstate travel, and was intended to. Conversely, exclusion impeded the smooth flow of national commerce, notwithstanding internal proprietary arrangements within the terminal.

It cannot seriously be urged that because the terminal is stationary or local as to some persons, it therefore is not in interstate commerce at all and that petitioner's treatment for that reason did not constitute a burden on interstate commerce. This Court has held that a transaction with a red cap at a railroad station is in interstate commerce, *N. Y. N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128. As stated in that case at p. 130, "Neither continuity of interstate movement nor isolated segments of the trip can be decisive. 'The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce,'" citing *Sprout* v. *South Bend*, 277 U. S. 163, 168. Moreover, grain elevators surely as stationary as the bus terminal have been held to be in inter-

state commerce. See *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 229. And taxi service between two rail terminals in Chicago which to the man in the street might look like ordinary local taxi traffic also has been held to be in interstate commerce. *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 228.

The operation of a bus terminal surely falls within the principle of such cases at least insofar as it applies to an interstate bus passenger who attempts to use its facilities in the usual manner in the normal course of an interstate bus trip.

II. *Petitioner's conviction which served only to enforce the racial regulation of the bus terminal restaurant conflicts with principles established by decisions of this Court.*

If anything is fundamental in constitutional jurisprudence it is that the state may not enforce racial regulations. *Shelley* v. *Kraemer*, 334 U. S. 1, invalidated judicial enforcement of private racially restrictive covenants by court injunction. *Barrows* v. *Jackson*, 346 U. S. 249, held that racially restrictive covenants could not be enforced by the courts by assessing damages for their violation. *Marsh* v. *Alabama*, 326 U. S. 501 held that the criminal courts could not be employed to convict of trespass persons exercising Fourteenth Amendment rights.

In this case petitioner conducting himself in a manner entirely normal for an interstate passenger ran afoul of the terminal restaurant's racial rule. While he may bring civil suit against the terminal for refusal to serve him, see *Whiteside* v. *Southern Bus Lines, supra, Chance* v. *Lambeth, supra, Valle* v. *Stengel*, 176 F. 2d 697 (3d Cir. 1949), perhaps he might also have chosen to suffer the indignity and discomfort and done nothing. But here the terminal chose to invoke the power of the State, which readily com-

plied, to convict petitioner of a crime. Apart from the fairly substantial penalty which could have been imposed or the modest, but highly inconvenient penalty and attending criminal proceedings in which he became embroiled, it may be noted that he is a law student whose opportunity for admission to the bar obviously will be complicated by a criminal conviction on his record. At least to the extent that the State criminal machinery has been used to enforce discrimination, therefore, the judgment below conflicts with the long, consistent line of decision in this Court. For this reason, therefore, the writ of certiorari should be granted to correct the grievous error and injustice committed below.

Respectfully submitted,

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APPENDIX

Judgment of the Supreme Court of Appeals

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 19th day of June, 1959.

The petition of Bruce Boynton for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond on the 20th day of February, 1959, in a prosecution by the Commonwealth against Bruce Boyington, alias Bruce Boynton, for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Hustings Court.